

7 CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

(a) Access Channels

(1) Grantee will provide the County with up to eighteen PEG channels in the aggregate, though Grantee reserves the right to utilize for its own purposes any portion of such channels not utilized for PEG purposes.

(2) The Grantee shall make available to all Subscribers residing within Fairfax County in those areas where Grantee has authority to provide service at least the following video Channels for public, educational and governmental use, which Channels shall be in addition to any capacity provided on the Institutional Network pursuant to Section 1(k):

(A) Public access: 4

(B) Fairfax County Public Schools: 3

(C) George Mason University: 1

(D) Northern Virginia Community College: 1

(E) University of Virginia and/or Virginia Polytechnic Institute: 1

(F) Shared channel for institutions of higher education: 1

(G) County governmental access: 3 County governmental access channels shall be allocated to specific uses or agencies by the County.

(H) Reserved for educational and/or governmental access use as allocated by County: 4. The County shall not implement its use of three of these four Channels

until the County has switched over the Fairfax Training Network to the I-Net as provided in Appendix 2.

(3) The Grantee shall have an obligation to provide playback, training, outreach, administrative support and production assistance to public access Users, which obligation shall be discharged so long as (A) a valid and binding contract is maintained for the provision of such services with the Fairfax Cable Access Corporation, (B) a valid and binding contract for the provision of such services is maintained with some other public access management corporation, (C) rights over such public access management are undertaken pursuant to the provisions of Section 7(a)(4) and the Grantee provides the Public Access Grant (as hereinafter defined), together with any interest the Grantee may have or obtain in any existing assets of the public access management corporation that were purchased with funds provided by the Public Access Grant, to such management organization or to the County pursuant to Section 7(i)(1) herein, or (D) any other means, in the sole discretion of the County, that fulfills this obligation.

(4) If the County, in its sole discretion, finds unsatisfactory a contract for access services entered into pursuant to the preceding subsection (3), or the performance under such a contract, then the County may, in its sole discretion, undertake such management itself and the Grantee's obligations pursuant to Section 7(a)(3) shall be entirely discharged by providing the Public Access Grant, together with any interest the Grantee may have or obtain in any existing assets of the public access management corporation that were purchased with funds provided by the Public Access Grant, directly to the County, which may in turn reassign such Public Access Grant such assets, and any other assets that the County may otherwise acquire

from any such public access management corporation, to any third-party manager at the County's discretion.

(5) Except as provided in Section 1(e)(3), each PEG Channel shall be transmitted on the HSN in standard 6 MHz, unscrambled NTSC format so that every Subscriber can receive and display the PEG signals using the same converters and signal equipment that is used for other Basic Service Channels.

(6) If the Grantee makes changes to Grantee's Cable System that require improvements to access facilities and equipment, Grantee shall provide any necessary additional headend and distribution facilities or equipment within thirty days so that PEG facilities and equipment may be used as intended with respect to the up to eighteen PEG channels specified in Section 1(a)(2) and any channels reserved by PEG Users pursuant to Section 1(e)(3), including, among other things, so that live and taped programming can be cablecast efficiently to Subscribers.

(b) Access Channel Assignment

(1) Each PEG Channel shall be delivered over the HSN with transmission quality the same as or better than the transmission quality of any other Channel on Basic Cable Service.

(2) The Grantee shall not arbitrarily or capriciously change access channel assignments, and the Grantee shall seek to minimize the number of such changes; provided, however, that the Grantee may change access channel assignments as it deems appropriate so long as (i) the Grantee gives the access channel programmer ninety days' notice of such change, and (ii) the Grantee provides, free of charge, public announcements of such changes that shall

include (A) to the extent Grantee has advertising availability, advertising such PEG channel changes on advertising inserts on local channels carrying non-satellite programming for up to two minutes per day in prime time on such local channels for the thirty days prior to such change, and (B) providing prominent notice of such changes in at least two issues of Grantee's monthly cable guide magazine prior to such change.

(c) Capital Grants for Access Facilities

(1) The Grantee shall provide capital grants in amounts in the aggregate totaling 3% for each quarter of the amount that results from subtracting from Gross Revenues for that quarter the Franchise Fees paid to the County for that quarter (collectively, the "Total Grants").

(2) The Total Grants shall be paid to the County on a quarterly basis with such payments being made no later than thirty days following the end of each quarter.

(3) If the Grantee and the County disagree at any time as to the amounts due under this subsection (c), the Grantee shall continue paying the specified grants in the amounts paid in the last undisputed payment during the period of any such dispute, provided, however, that the County shall return any such amounts paid to the County that are later determined to be in excess of the correct amounts.

(d) Return Feed From Facilities

(1) The Grantee shall provide without charge transmission by means of dedicated, fully fiber optic links between the headend and the PEG access origination sites specified in Appendix 3 (the "PEG Origination Site Appendix") so that signals can be generated at these sites and routed onto an appropriate access channel. Such upstream transmission shall

be in addition to any required capacity on the HSN and shall not be part of the I-Net specified in Section 1(k), although the fiber links may at the Grantee's option be emplaced together with those carrying the I-Net. Such upstream transmission provided by the Grantee shall include all equipment necessary for amplification, optical conversion, receiving, transmitting, switching, and headend processing of upstream PEG signals from the studio at each PEG origination site, and all such equipment, including but not limited to the fiber electronics at the PEG studio, shall be installed, repaired, and maintained in good working order by the Grantee on Grantee's side of the Demarcation Point, provided, however, that the Grantee shall not be responsible for the cost of repairing any damage caused by the operator of the PEG studio or its agents or invitees, and that the Grantee's obligation with respect to such upstream transmission shall be dependent on the operator of the PEG origination site's providing Grantee, without charge, with such space, electrical power supply, access, and other facilities and cooperation as shall be necessary to allow the Grantee to fulfill its duties under this Agreement with respect to such upstream transmission. The dedicated channels may be multiplexed into backbone fiber rings at the hub or node nearest to the origination site for return to the headend. The initial operation dates of the dedicated fiber optic links will be determined by Grantee based on where each site is located in Grantee's construction plan, but in any case shall be no later than the completion date stated in Section **Error! Reference source not found.**

(2) Grantee must provide equipment with baseband video and balanced stereo inputs at each PEG origination studio and a means by which the channel manager at the PEG origination studio may remotely route signals from that studio onto the correct HSN PEG Channels.

(3) The Grantee shall transmit the upstream feeds from the Demarcation Point to the headend in such a manner as to comply with FCC technical standards and with applicable EIA RS-250B performance standards for medium-haul video.

(e) Use of PEG Channels, Facilities and Equipment

(1) The County, or the entity that manages a PEG Channel, shall be able to establish and enforce rules and procedures for use of the PEG Channels pursuant to Section 611(d) of the Cable Act, 47 U.S.C. § 531(d). The County shall resolve any disputes among PEG users regarding allocation of PEG Channels.

(2) The Grantee will provide headend and distribution facilities for downstream transmission of the PEG Channels on the HSN, with respect to the up to eighteen PEG channels specified in Section 1(a), at no charge to the County or other PEG access programmers.

(3) If capacity dedicated for PEG use pursuant to Section 1(a) of this Agreement is subdivided or compressed resulting in multiple transmission paths, the Grantee may retain for its own use: (i) 100% of the additional capacity on Channels dedicated to public access use prior to such subdivision or compression; (ii) 50% of the additional capacity on Channels dedicated to educational or governmental access use prior to such subdivision or compression; provided, however, that any additional capacity reserved for use by educational and governmental PEG Users pursuant to this subsection that is not activated by such entities within twelve months of the date on which the Grantee notifies the County of such subdivision or compression may be used by Grantee until twelve months after notice from the County or such educational Users of intent to activate such reserved capacity, provided, however, that such

notice shall be effective only if the County or such educational Users subsequently actually use such capacity. For purposes this subsection, the capacity dedicated to a PEG channel prior to such subdivision or compression refers to a 6 MHz channel.

(4) The County or its licensees, assigns, or agents shall not transmit on public, educational or governmental access channels commercial programming or commercial advertisements to the extent that they would constitute competition with the Grantee for such commercial programming or commercial advertisements, subject to the following:

(A) For purposes of this subsection, "commercial programming or commercial advertisements" shall mean programming or advertisements for which the County receives payment from a third party (a party other than the County or the Grantee), but shall not include announcements indicating that programming is underwritten by a commercial entity, such as the underwriting announcements typically displayed by the Public Broadcasting System.

(B) For purposes of this subsection, "the County" shall be deemed to include the Fairfax County Public Schools.

(f) Cable Drops and Outlets for Government Facilities.

(1) The Grantee will provide the following, at no charge, at each fire station, public school, police station, public library, and such buildings used for public purposes as may be designated by the County; provided, however, that if it is necessary to extend a Grantee's trunk or feeder lines more than three hundred feet solely to provide service to any such school or public building, the County shall have the option of paying the Grantee's direct costs for such extension in excess of three hundred feet itself, or of releasing the Grantee from or postponing the Grantee's obligation to provide service to such building:

(A) the first service drop of the HSN, for each such site where a drop is not already installed;

(B) one HSN Subscriber converter per site, provided that the Grantee and the entity operating the site shall each pay half of the actual cost of all new digital converters that replace any converters existing at such site on the Effective Date, such replacement to occur when the Grantee first begins to transmit a regularly scheduled channel on either the Basic Service or a cable programming service tier in a form other than 6 MHz NTSC; and

(C) Basic Service and Cable Programming Service.

(2) Grantee shall deliver all HSN signals to each such HSN drop in buildings to which service is provided on the Effective Date at the same power level provided there on the Effective Date or better. Grantee shall deliver all HSN signals to each such HSN drop in buildings to which service is provided after the Effective Date at 15 dBmV or better, measured at the Demarcation Point, for each building at which the County advises the Grantee it will use two or more converters.

(3) The County shall be responsible for the cost of any “terminal equipment,” including TV monitors, VCRs, and/or computers.

(4) The cost of inside wiring, additional drops or outlets and additional converters requested by the County within these specified facilities, including those drops or outlets in excess of those currently installed, are the responsibility of the County. If the County requests the Grantee to provide such services or equipment, the County will pay the Grantee for those costs in accordance with the cable cost of service standards established by the FCC as such standards are in effect as of the Effective Date.

(5) If the County makes a request to the Grantee in writing, the Grantee shall rewire buildings, move drops or entrance links, and make other changes to installations of inside wiring. The County will be responsible for the cost of all such work, and the County will pay the Grantee for these costs in accordance with the cable cost of service standards established by the FCC as such standards are in effect as of the Effective Date, subject to any applicable Universal Service discount.

(6) Subject to the limitations set forth in this subsection 1(f), whenever necessary, or dictated by changes in the Grantee's technology, the Grantee shall upgrade all equipment provided at Grantee's expense pursuant to this subsection 1(f), in order to ensure that the County can continue to receive the services offered by the Grantee to the County pursuant to this Franchise Agreement.

(g) *Backup Facilities and Equipment.* Grantee shall design, build, and maintain PEG upstream feeds so that such feeds function as reliably as Grantee's Cable System as a whole, and are no more likely to fail than is Grantee's Cable System to fail as a whole.

(h) *Editorial Control.* Except as expressly permitted by federal law, the Grantee shall not exercise any editorial control over the content of programming on the Public, Educational and Governmental Access Channels (except for such programming as the Grantee may cablecast on such Channels).

(i) *Payments by Grantee to PEG Users.*

(1) The Grantee shall provide payments to PEG Users, that shall be subtracted from the amount otherwise payable to the County by the Grantee in accordance with Section 7(c) and Section 8(a), in amounts in the aggregate totaling 0.96% for each quarter of the amount that

results from subtracting from Gross Revenues for that quarter the Franchise Fees paid to the County for that quarter ("Gross Revenues Less Franchise Fees") of which 0.8% shall be provided for public access as set forth in Section 7(a)(3) and (4) (the "Public Access Grant") and 0.16% of which shall be for higher education uses ("Higher Education Grants") The grants provided herein shall be in partial satisfaction of the amounts otherwise payable to the County in accordance with Section 7(c) and Section 8(a).

(2) The Public Access Grant and the Higher Education Grants shall be paid on a quarterly basis with such payments being made no later than thirty days following the end of each quarter, as follows:

(A) Paid to George Mason University: 0.08 percent of Gross Revenues Less Franchise Fees;

(B) Paid to Northern Virginia Community College: 0.08 percent of Gross Revenues Less Franchise Fees;

(C) Paid as set forth in Section 7(a)(3) and (4): 0.8 percent of Gross Revenues Less Franchise Fees.

(j) *Carriage of PEG Programming.* All PEG programming shall be carried on the Grantee's Basic Service tier, except as otherwise agreed upon.

(k) *Institutional Network*

(1) The Grantee shall construct the I-Net System Upgrade to be paid for by the County, linking public, educational and governmental facilities in the County (the "Institutional Network" or "Network" or "I-Net"), in accordance with the conditions set forth in Appendix 2 and this Franchise Agreement.

(2) The Grantee shall assist the County in the County's migration of the Fairfax Training Network ("FTN") as part of the I-Net System Upgrade as reflected in Appendix 2.

(3) The Grantee shall continue to maintain and operate the existing Institutional Network and the FTN as they exist as of the Effective Date of this Agreement, pursuant to the terms of the Prior Franchises and the parties' prior correspondence regarding the FTN (Letter from Thomas G. Robinson to Thomas Waldrop dated April 14, 1988; Letter from Thomas E. Waldrop to Thomas G. Robinson dated April 21, 1988), until the County switches all its current institutional network and FTN operations to the I-Net pursuant to Appendix 2. The County shall switch such operations to the I-Net pursuant to Appendix 2 by two years after the completion of construction of the I-Net System Upgrade. After the County has switched such operations, the Grantee shall not use the former I-Net except as authorized by this Agreement or pursuant to applicable law.

(l) *Costs and Payments Not Franchise Fees.* Grantee waives any claims that any costs to the Grantee associated with the provision of support for PEG access (including the I-Net) pursuant to this Franchise Agreement, including but not limited to the Total Grants, constitute franchise fee payments within the meaning of 47 U.S.C. § 542.